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14 Brian T. Howe and Stephen J. Norman

15 **UNITED STATES BANKRUPTCY COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

18 In re:

Case No. 19-30088 (DM)
Chapter 11
(Lead Case) (Jointly Administered)

19 **PG&E CORPORATION,**

20 **-and-**

21 **PACIFIC GAS & ELECTRIC**
22 **COMPANY,**

23 **Debtors.**

24 ☐ Affects PG&E Corporation
25 ☐ Affects Pacific Gas & Electric Company
26 ☒ Affects both Debtors

27 **All papers shall be filed in the Lead Case,*
28 *No. 19-30088(DM)*

MOTION OF REAL PROPERTY
OWNERS FOR AN ORDER
CONFIRMING THE AUTOMATIC STAY
DOES NOT BAR CONTINUATION OF
EMINENT DOMAIN ACTIONS FILED
BY THE DEBTOR PRE-PETITION AND
GRANTING RELIEF FROM STAY FOR
CAUSE TO THE EXTENT IT MIGHT
OTHERWISE BAR ACTS RELATED TO
THE PROCEEDINGS, INCLUDING THE
PAYMENT OF JUST COMPENSATION

Date: April 23, 2019
Time: 9:30 a.m. (Pacific Time)
Place: United State Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102
Objection Deadline: April 16, 2019 at 4:00p.m.
(Pacific)

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1 **MOTION**

2 Moving parties DF Properties, a California corporation, (“**DF**”), KV Sierra
3 Vista, LLC, a California limited liability company, (“**KV**”), Baseline 80 Investors,
4 LLC, a California limited liability company, and Baseline P&R, LLC, a California
5 limited liability company, (collectively, “**Baseline Entities**”), John J. Guerra Jr.,
6 Successor Trustee of the Cyril G. Barbaccia Irrevocable Trust dated December 15,
7 1976 (“**CGB**”), Joiner Limited Partnership (“**Joiner**”), and Brian T. Howe and
8 Stephen J. Norman (“**Howe and Norman**”) (hereinafter, collectively “**Real**
9 **Property Owners**”), hereby move the Court, pursuant to 11 U.S.C. §§ 105(a),
10 362(a)(1), and 362(d)(1), and the Takings clause of the Fifth Amendment to the
11 United States Constitution and Article I, section 19 of the California Constitution,
12 and in conformity with the procedural requirements of Bankruptcy Local Rule 4001-
13 1(a), for an order confirming no stay is in effect as to direct condemnation actions
14 (hereinafter, collectively “**Eminent Domain Actions**”) filed by Pacific Gas &
15 Electric Company (referred to herein, in conjunction with PG&E Corporation,
16 collectively, as the “**Debtor**”) pre-petition, and granting relief from the automatic
17 stay for all purposes with respect to the **Eminent Domain Actions** and the
18 property interests subject thereto, so that the **Real Property Owners** may take
19 any acts they deem necessary or appropriate to exercise, safeguard, or otherwise
20 preserve their constitutional rights to the extent authorized by the Eminent
21 Domain Law of California¹, the **Debtor** may meet its constitutional and statutory
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28 ¹ Commonly referred to as the Eminent Domain Law, Title 7 of Part 3 of the California Code of Civil Procedure (“CCP”), CCP 1230.010, et seq., is the

1 obligations, and the superior courts in which the **Eminent Domain Actions** are
2 pending may make and enforce without limitation all appropriate orders and enter
3 judgments.

4 The motion is made on the following grounds:

5 (1) Pursuant to 11 U.S.C. § 362(a)(1), only those actions or proceedings
6 commenced or continued *against* the **Debtor** that were or could have been
7 commenced before the commencement of the case to recover a claim against the
8 debtor that arose before the commencement of the case are subject to operation of
9 the automatic stay. Because the **Eminent Domain Actions** were commenced by
10 the **Debtor**, and not the Real Property Owners, the automatic stay does not bar
11 their continuation by the **Debtor** against the **Real Property Owners**;
12

13 (2) Pursuant to the Takings clause of the Fifth Amendment to the United
14 States Constitution, Article I, section 19 of the California Constitution, 11 U.S.C.
15 §105(a), and 11 U.S.C. § 362(d)(1), to the extent the automatic stay might operate to
16 bar any actions by the **Real Property Owners** in their defense of the **Eminent**
17 **Domain Actions**, would preclude their efforts to enforce terms of settlement
18 agreements or judgments entered in the **Eminent Domain Actions**, or to
19 otherwise obtain a determination of and be paid the just compensation to which
20 they are constitutionally entitled, the Court should terminate the stay for cause;
21

22 The requested order of confirmation and relief sought by this motion would
23 authorize each of the following potential actions by the **Real Property Owners**,
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25 _____
26 comprehensive body of procedural rules that govern condemnation actions in
27 California.
28

1 the **Debtor**, and the superior courts in which the **Eminent Domain Actions** are
2 now pending:

- 3 • Continued prosecution of the **Eminent Domain Actions** in the superior
4 courts of the State of California in which they are now pending;
- 5 • The filing, amendment, and supplementing of pleadings as permitted by
6 California law, and entry of related orders;
- 7 • The filing, amendment, and supplementing of motions authorized by
8 California law, and entry of related orders;
- 9 • Full engagement of the **Real Property Owners** and the **Debtor** in all
10 discovery permitted, and the enforcement of discovery obligations, as
11 permitted under California law;
- 12 • The serving of demands for exchange, and exchange of lists of expert witness
13 and statements of valuation data pursuant to CCP § 1258.210, et seq.;
- 14 • The exchange of final offers and demands pursuant to CCP § 1250.410;
- 15 • Participation of the **Real Property Owners** and the **Debtor** in mediations,
16 settlement conferences, and any other formal or informal alternative dispute
17 resolution processes as may be deemed desirable by the parties;
- 18 • The depositing and increasing of amounts of probable just compensation by
19 the **Debtor**; stipulations to, and unilateral applications for, withdrawal of
20 deposits; and orders authorizing withdrawals pursuant to the provisions of
21 CCP §§ 1255.010, et seq. and 1255.210, et seq.;
- 22 • The filing of motions to vacate orders of possession, and the entry of such
23 orders pursuant to CCP § 1255.440;
- 24 • Abandonment of the **Eminent Domain Actions** pursuant to CCP §
25 1268.510²;
- 26 • Dismissals and entry of judgments as warranted under California law, and
27 orders for redelivery of possession and for damages proximately caused by the
28

² This differs from the concept of abandonment of property of the estate by either operation of law upon the close of a bankruptcy case or by order on the basis of burden or inconsequential value. What is referred to here is abandonment of the condemnation proceedings. This option, albeit infrequently utilized and unlikely to be exercised by the **Debtor** in relation to any of the **Eminent Domain Actions**, that is available “any time after the filing of the complaint and before the expiration of 30 days after final judgment.” CCP § 1268.510(a).

proceedings and dismissals pursuant to CCP § 1268.620, and for awards of litigation expenses pursuant to CCP § 1268.610 to the extent applicable;

- Trial to assess and finally determine just compensation, pursuant to California law, including the provisions of CCP §§ 1263.310, et seq, 1263.410, et seq. defining the governing valuation standards, fair market value for property taken, and compensatory damage for injury to remainder property;
- Payment of just compensation³, including costs to cure or mitigate severance damages, pursuant to settlement agreements and judgments entered, and acts to enforce judgments obtained, whether before or after the commencement of the bankruptcy case, against the **Debtor** and property of the estate, through all available means under California law;
- Motions pursuant to CCP § 1268.020 to dismiss the **Eminent Domain Actions** in the event of the **Debtor's** failure to timely pay the full amount required by settlement agreements executed and judgments entered pursuant to the provisions of CCP § 1268.010, et seq., and the entry of judgments of dismissal pursuant thereto;
- Deposits and withdrawals pursuant to CCP § 1268.110, et seq.; and
- The filing and participation in appellate proceedings that may arise out of the **Eminent Domain Actions**.

The motion is supported by the points and authorities herein, the requisite Relief From Stay Cover Sheet and Declaration of Kristen Renfro in support of Motion of Real Property Owners for an Order Confirming the Automatic Stay Does Not Bar Continuation of Eminent Domain Actions Filed By the Debtor Pre-Petition

³ In California, just compensation has been deemed to include recoverable court costs pursuant to CCP §§ 1268.710 and 1268.720, and litigation expenses awarded as costs pursuant to CCP §§ 1250.410. See *Goebel v. City of Santa Barbara*, 92 Cal. App. 4th 549, 559 (2001) ("An award of costs against a party whose property has been taken or damaged by a governmental entity would reduce the just compensation mandated by the state Constitution.") and *Heimann v. City of Los Angeles*, 30 Cal. 2d 746, 752 (1947), overruled in part by *Los Angeles Cty. v. Faus*, 48 Cal. 2d 672 (1957) (Requiring property owner "to pay any portion of their costs necessarily incidental to the trial of the issues on their part, or any part of the costs of the plaintiff would reduce the just compensation awarded by the jury, by a sum equal to that paid by them for such costs.") (quoting *San Francisco v. Collins*, 98 Cal. 259, 262 (1893)). It further includes interest or its equivalent. *Seaboard Air Line Ry. Co. v. United States*, 261 U.S. 299, 306 (1923) ("Seaboard").

1 And Granting Relief From Stay for Cause to the Extent It Might Otherwise Bar
2 Acts Related to the Proceedings, Including the Payment of Just Compensation
3 (hereinafter "Renfro Decl.") filed herewith, all relevant pleadings and papers on file
4 with the Court, and such oral argument as may be presented at hearing on the
5 matter. A copy of the form of order proposed by the **Real Property Owners** is filed
6 herewith as **Exhibit A** to the Renfro Decl.
7

8 MEMORANDUM OF POINTS AND AUTHORITIES

9 **I. JURISDICTION**

10 The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§
11 157 and 1334, the *Order Referring Bankruptcy Cases and Proceedings to*
12 *Bankruptcy Judges*, General Order 24 (N.D.Cal.), and Rule 5011-1(a) of the
13 Bankruptcy Local Rules for the United States District Court for the Northern
14 District of California. This is a core proceeding pursuant to 28 U.S.C. §
15 157(b)(2)(G).
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18 **II. SUMMARY OF FACTS**

19 The **Real Property Owners** are the fee title owners of the following parcels
20 of real property (hereinafter, collectively, "**Subject Properties**"), in which the
21 **Debtor** seeks to take and/or has taken property interests for which it owes just
22 compensation:

- 23 • APNs 498-010-020, 498-010-019, 498-010-015 (formerly 017-151-027), 017-
24 151-029, located at 5000 Baseline and 5501 Market Street, Roseville,
California in Placer County (**DF**)
- 25 • APNs 499-010-014, 499-010-017, 499-010-018, 499-010-032 (formerly 017-
26 151-044 and 017-151-046) (**KV**)
- 27 • APN 498-010-012, 498-010-013 (formerly 017-151-026) (**CGB**)
- 28 • APN 017-151-035 and APNs 017-151-044, 017-151-045, 017-151-046
(formerly 017-150-082, 017-150-087, 017-150-088) (**Baseline Entities**)
- APN 010-010-008, 010-010-009, 030-140-004 (**Howe and Norman**)

- APN 021-310-097 (**Joiner**)

See Renfro Decl., ¶4, p.2, lines 18-28.

Pre-petition, the **Debtor** filed the **Eminent Domain Actions** to take by its power of eminent domain, certain interests in each of the **Subject Properties**.⁴

The **Debtor** seeks in four of the **Eminent Domain Actions** to take permanent and temporary easement interests for the purposes of construction, maintenance, and operation of a 30-inch high pressure natural gas transmission line, known as Line 406/407 (hereinafter “Line 406/407 Project”, which the **Debtor** has alleged is being constructed for the purpose of bringing gas from Canada to service the Sacramento Valley region. According to the **Debtor**, the Line 406/407 Project spans over forty miles and traverses four counties. In the actions affecting the **Howe** and **Norman** property and the **Joiner** property, the **Debtor** has alleged it is seeking permanent and temporary interests to facilitate the installation of valve stations, In-Line Inspection facilities, and a valve automation line regulator station to improve the safety of existing gas transmission lines through the installation of remotely controllable and automated valves to identify operational issues and prevent pipeline ruptures. The projects are identified by the **Debtor**, respectively as the V-234 Valve Automation Line 173 Rocklin Regulator Station Project and the V-252 L-

⁴ Attached to the Renfro Decl. as **Exhibits B** through **H** are true and correct copies of the operative complaints filed by the **Debtor** in each of the Eminent Domain Actions affecting the **Subject Properties**. Each of the complaints includes a detailed description of the specific property interests sought relative to each of the **Subject Properties**.

1 123 MP 13.57 Lincoln Junction. See Renfro Decl., ¶¶7-8, p.3, lines 9-28, and
2 **Exhibits B - H** thereto.

3 The complaints filed by the **Debtor** in each of the **Eminent Domain**
4 **Actions** pray, in pertinent part, that (1) the real property interests sought to be
5 taken be condemned to the **Debtor**; (2) the **Real Property Owners** be required to
6 assert their interests and claims, and the court determine and condemn such
7 interests; and (3) just compensation for the **Debtor's** taking, including any
8 damages or benefits incidental thereto, be ascertained, assessed, and awarded.
9 Disputed in each of the **Eminent Domain Actions** is the amount of just
10 compensation due each of the respective **Real Property Owners**. See Renfro Decl.,
11 ¶9, p.4, lines 1-9, and **Exhibits B - H** thereto.

14 The **Debtor** has alleged in each of the **Eminent Domain Actions** that the
15 public interest and necessity require construction and operation of its projects, that
16 the projects are planned and located in the manner that will be most compatible
17 with the greatest public good and least private injury, and that the property
18 interests sought to be taken are necessary for the projects. In the majority of the
19 **Eminent Domain Actions**, the **Debtor** has obtained an order of prejudgment
20 possession (or has obtained an agreement for same), for which it was statutorily and
21 constitutionally required to deposit an amount determined to be the probable
22 amount of just compensation, for the benefit, and subject to withdrawal by, the
23 owners of the interests in the real property sought to be taken by the **Debtor** by
24 means of the **Eminent Domain Actions**. See Renfro Decl., ¶¶10-11, p.4, lines 10-
25 23, and **Exhibits B - H** thereto.

1 In order to permanently secure the interim rights it presently enjoys by
2 means of orders of prejudgment possession, the **Debtor** will be required to pay the
3 amount determined to be just compensation for the its taking, however ascertained,
4 assessed, or awarded.⁵

5
6 Pre-petition, the **Debtor** entered into identical Right to Take Settlement
7 Agreements in February of 2016 with **DF, KV, CGB**, and the **Baseline Entities**,
8 which resolved a portion of just compensation, including reimbursements for the
9 reasonable cost of certain landscaping, increased costs of construction of public
10 facilities due to the location of the Line 407 pipeline, and certain grading work, as
11 well as a subsequent Grading Work Agreement and a First Amendment to Grading
12 Work Agreement in 2017 with **DF**. Further, the **Debtor** has already otherwise fully
13 resolved and paid the amount of just compensation due the **Baseline Entities**
14 pursuant to a settlement agreement executed in December of 2017, has resolved the
15 amount of just compensation to be paid **CGB** pursuant to a Stipulation for Entry of
16 Judgment in Condemnation executed in January of 2019, and has resolved the
17 amount of just compensation to be paid **Howe** and **Norman** pursuant to a
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24 ⁵ For purposes of early possession, a court's "determination of the plaintiff's right to
25 take the property by eminent domain is preliminary only." (Legislative Committee
26 Comments—Assembly, 1975 Addition, to CCP § 1255.410.) "The granting of an
27 order for possession does not prejudice the defendant's right to demur to the
28 complaint or to contest the taking." *Id.* And a final order of condemnation which
effects a transfer of formal title to the rights to be acquired will be made only upon
payment of just compensation. See CCP § 1268.030 ("Upon application of any party,
the court shall make a final order of condemnation if the full amount of the
judgment has been paid as required by Section 1268.010 or satisfied pursuant to
Section 1268.020.")

1 Mediation Settlement Agreement and Release of Claims executed in January of
2 2019. See Renfro Decl., ¶12, p.4, line 24 - p.5, line 10.⁶

3 **III. SUMMARY OF ARGUMENT**

4 With respect to pending litigation upon the filing of bankruptcy by a debtor,
5 the automatic stay operates as a bar only to “the commencement or continuation,
6 including the issuance or employment of process, of a judicial, administrative, or
7 other action or proceeding *against* the debtor that was or could have been
8 commenced before the commencement of the case under this title, or to recover a
9 claim against the debtor that arose before the commencement of the case under this
10 title.” 11 U.S.C. § 362(a)(1) (emphasis added). Further, 11 U.S.C. § 105(a) provides:
11 “The court may issue any order, process, or judgment that is necessary or
12 appropriate to carry out the provisions of this title.” 11 U.S.C. § 362(d)(1) provides
13 that relief from the automatic stay may be granted for “cause.” And the Takings
14 clause of the Fifth Amendment of the United States Constitution and Article I,
15 section 19 of the California Constitution provide a fundamental substantive
16 constitutional right to just compensation that cannot be reduced or denied by
17 bankruptcy laws. See *In re City of Detroit*, 524 B.R. 147, 268 (Bankr. E.D. Mich.
18 2014) (“The Supreme Court has consistently held that bankruptcy laws are subject
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24 ⁶ True and correct copies of the referenced agreements are filed herewith as
25 **Exhibits I - M** to the Renfro Decl.; with the exceptions that only one of the identical
26 Right to Take Settlement Agreements is attached – the Right to Take Settlement
27 Agreement entered into with **DF** – and the **Baseline Entities** settlement
28 agreement is not provided given that the compensation provided for therein has
been paid. The Increased Cost Agreement requires the **Debtor** to fund an escrow
agreement in the amount of \$1 million, for the benefit of the **DF, KV, CGB**, and the
Baseline Entities, to be drawn upon for reimbursement if and when any of owners
incurs increased costs as a result of the presence of the Line 407 pipeline.

1 to the prohibition against governmental taking of private property without just
2 compensation.”) In order to ensure that the **Real Property Owners** are not denied
3 just compensation, and that claims of just compensation are ascertained and paid
4 through the most fair, efficient, and least burdensome means, the Court should
5 grant relief for all purposes from the automatic stay, to the extent it would
6 otherwise bar proceedings in state courts, to allow such claims to be resolved and
7 promptly paid and enforced pursuant to provisions of the Eminent Domain Law.

9 IV. ARGUMENT

10 A. The Automatic Stay Does Not Apply to Pre-Petition Actions 11 Commenced by the Debtor.

12 The automatic stay does not bar the **Debtor** “from continuing to prosecute a
13 pre-bankruptcy lawsuit” it instituted. *In re Merrick*, 175 B.R. 333, 337 (B.A.P. 9th
14 Cir. 1994) (citing several circuits in accord); accord *In re Miller*, 262 B.R. 499, 503
15 (B.A.P. 9th Cir. 2001) (citing *Chugach Timber Corp. v. Northern Stevedoring &*
16 *Handling Corp.*, 23 F.3d 241, 246 (9th Cir.1994), quoting *Advanced Ribbons and*
17 *Office Products, Inc. v. U.S. Interstate Distributing, Inc.*, 125 B.R. 259, 263 (9th Cir.
18 BAP 1991) (“[The automatic stay] does not protect non-debtor parties or their
19 property.”); *Rett White Motor Sales Co. v. Wells Fargo Bank*, 99 B.R. 12, 15 (N.D.
20 Cal. 1989) (“There is simply no language in Section 362(a) designed to stay actions
21 initiated by the debtor.”); and *Shah v. Glendale Federal Bank*, 44 Cal.App.4th 1371,
22 1375 (1996) (“California decisional authority holds, based on the plain language of
23 section 362(a)(1), the automatic stay is inapplicable to superior court actions
24 initiated by the debtor.”) Further, “[g]iven this freedom for the debtor . . . to
25 prosecute [its] claims, an equitable principle of fairness” likewise “requires a
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1 defendant to be allowed to defend himself from the attack without imposing on him
2 a gratuitous impediment in dealing with an adversary who suffers no correlative
3 constraint.” *In re Merrick*, 175 B.R. at 338.

4
5 Despite the clear inapplicability of the automatic stay to debtor-initiate
6 actions, the **Debtor** has filed notices of stay in the **Eminent Domain Actions**, and
7 it has maintained that the automatic stay currently bars the proceedings from
8 moving forward. Therefore, the Court should confirm that the automatic stay does
9 not so operate, so that the courts in which the **Eminent Domain Actions** are
10 pending, the **Real Property Owners**, and the **Debtor** may proceed with clarity
11 and certainty, and without further undue delay.
12

13 **B. Relief from Stay as to Actions that Might Be Subject to the**
14 **Automatic Stay in Connection with the Eminent Domain Actions**
15 **May Be Granted for Cause in the Court’s Discretion Pursuant to**
16 **11 U.S.C. § 362(d)(1), and in Keeping with the Court’s Authority**
17 **Pursuant to 11 U.S.C. § 105(a).**

18 “The Section 362 automatic stay gives the bankruptcy court an opportunity to
19 harmonize the interests of both debtor and creditors while preserving the debtor’s
20 assets for repayment and reorganization of his or her obligations.” *In re Mac*
21 *Donald*, 755 F.2d 715, 717 (9th Cir. 1985). “While Congress intended the automatic
22 stay to have broad application, the legislative history to section 362 clearly indicates
23 Congress’ recognition that the stay should be lifted in appropriate circumstances.”
24 *In re Robbins*, 964 F.2d 342, 345 (4th Cir. 1992), as amended (May 27, 1992).

25 “On request of a party in interest and after notice and a hearing, the
26 bankruptcy court may grant relief from the automatic stay for cause.” *In re Judkins*,
27 28 F.3d 106 (9th Cir. 1994) (citing 11 U.S.C. § 362(d)(1)); see also 11 U.S.C. § 105(a)
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1 (“The court may issue any order, process, or judgment that is necessary or
2 appropriate to carry out the provisions of this title.”) “A decision to lift the
3 automatic stay under 11 U.S.C. § 362 is within the discretion of the bankruptcy
4 judge and reviewed for an abuse of discretion.” *In re Mac Donald*, 755 F.2d at 716.

5
6 “The term ‘cause’ as used in § 362(d)(1) ‘is a broad and flexible concept which
7 permits a bankruptcy court, as a court of equity, to respond to inherently fact-
8 sensitive situations.’” *In re A Partners, LLC*, 344 B.R. 114, 127 (Bankr. E.D. Cal.
9 2006) (quoting *In re Indian River Estates, Inc.*, 293 B.R. 429, 433 (Bankr.N.D.Ohio
10 2003)). “Because there is no clear definition of what constitutes “cause,”
11 discretionary relief from the stay must be determined on a case by case basis.” *In re*
12 *Castlerock Properties*, 781 F.2d 159, 163 (9th Cir. 1986) (“*Castlerock*”) (quoting *In re*
13 *Mac Donald*, 755 F.2d at 717). “Thus, section 362 gives the bankruptcy court wide
14 latitude in crafting relief from the automatic stay.” *In re Schwartz*, 954 F.2d 569,
15 572 (9th Cir. 1992).

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18 **C. Relief, to the Extent Necessary, Is Appropriate Here, Where It Is**
19 **Essential to Uphold the Real Property Owners’ Constitutional**
20 **Rights, and Would Fairly and Efficiently Accommodate the Debtor**
21 **and the Estate’s Ability to Secure Necessary Property Rights in**
22 **the Ordinary Course, and Without Risk to Creditors.**

23 “Factors to consider in determining whether the automatic stay should be
24 modified for cause include: (1) an interference with the bankruptcy; (2) good or bad
25 faith of the debtor, (3) injury to the debtor and other creditors if the stay is
26 modified; (4) *injury to the movant if the stay is not modified*; and (5) the *relative*
27 *proportionality [sic] of the harms from modifying or continuing the stay.*” *In re A*
28 *Partners, LLC*, 344 B.R. at 127 (emphasis added).

1 Further, additional non-exclusive factors have been accepted as relevant, and
2 as applicable, to the determination of “whether to lift the stay to permit pending
3 litigation to continue in another forum,” which “closely relate to those that a
4 bankruptcy court must consider in deciding whether to exercise permissive
5 abstention under 28 U.S.C. § 1334(c)(1).” *In re Plumberex Specialty Prod., Inc.*, 311
6 B.R. 551, 558–59 (Bankr. C.D. Cal. 2004) (referring to so-called “*Curtis* factors,”
7 articulated in *In re Curtis*, 40 B.R. 795 (Bankr.D.Utah 1984)). Applicable non-
8 duplicative factors include: (1) “[w]hether the relief will result in a partial or
9 complete resolution of the issues,” (2) “lack of any connection with or interference
10 with the bankruptcy case,” (3) “interests of judicial economy and the expeditious
11 and economical determination of litigation for the parties,” (4) and “[w]hether the
12 foreign proceedings have progressed to the point where the parties are prepared for
13 trial.”

14 Finally, also relevant here is “expertise of the state court” with respect to the
15 subject matter of the **Eminent Domain Actions**. *In re Kronemyer*, 405 B.R. 915,
16 921 (B.A.P. 9th Cir. 2009).

17 In the **Eminent Domain Actions**, the constitutional guarantee of just
18 compensation is at issue, and the right of just compensation is exceptional. “The
19 Takings Clause of the Fifth Amendment, applicable to the States through the
20 Fourteenth Amendment, . . . prohibits the government from taking private property
21 for public use without just compensation.”⁷ *Palazzolo v. Rhode Island*, 533 U.S. 606,
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27 ⁷ The **Debtor** is empowered to take property pursuant to California Public Utilities
28 Code section 613, subject to compliance with requirements of the Eminent Domain
Law.

1 617 (2001) (citing *Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226 (1897); U.S.
2 Const. amend. V. (private property may not “be taken for public use, without just
3 compensation.”); Cal. Const. art. I, § 19 (“Private property may be taken or damaged
4 for a public use and only when just compensation, ascertained by a jury unless
5 waived, has first been paid to, or into court for, the owner.”). “[N]o private property
6 shall be appropriated to public uses unless a full and exact equivalent for it be
7 returned to the owner.” *Monongahela Nav. Co. v. U.S.*, 148 U.S. 312, 326 (1893)
8 (“*Monongahela*”). As has been stated time and again by the United States Supreme
9 Court, just compensation “must be a full and perfect equivalent for the property
10 taken.” *Monongahela* at 326; accord *Seaboard*, 261 U.S. at 304, *United States v.*
11 *Miller*, 317 U.S. 369, 373 (1943), and *United States v. Reynolds*, 397 U.S. 14, 16
12 (1970) (“*Reynolds*”). An injured owner must “be put in as good position pecuniarily
13 as he would have been if his property had not been taken.” *Seaboard* at 304;
14 *Reynolds* at 16.

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18 The constitutional right to just compensation “cannot be taken away by
19 statute.” *Seaboard* at 304. Congress lacks the right to alter the measure of
20 compensation for property taken by the power of eminent domain. See *Monongahela*
21 at 327 (ascertainment of just compensation “is a judicial inquiry”); accord *Seaboard*
22 at 304 and *United States v. New River Collieries Co.*, 262 U.S. 341, 343-344 (1923)
23 (“The ascertainment of compensation is a judicial function, and no power exists in
24 any other department of the government to declare what the compensation shall be
25 or to prescribe any binding rule in that regard.”). Therefore, it is clear that no
26 provisions of the Bankruptcy Code may constitutionally be applied in a manner that
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1 would deny or reduce just compensation. Discharging, or reducing, any claim of just
2 compensation against the **Debtor** would result in a clear constitutional violation:
3 no plan may constitutionally be confirmed that would deny just compensation for
4 private property taken or damaged by the **Debtor**. *In re City of Detroit*, 524 B.R.
5 147, 268-270 (Bankr. E.D. Mich. 2014) (citing *Blanchette v. Connecticut General*
6 *Insurance Corps.*, 419 U.S. 102 (1974) and *Louisville Joint Stock Land Bank v.*
7 *Radford*, 295 U.S. 555 (1935)).⁸

9 Further, “A clear congressional policy exists to give state law claimants a
10 right to have claims heard in state court.” *Castlerock*, 781 F.2d at 163 (citing 28
11 U.S.C. § 1334(c)). “The Senate Report accompanying the Bankruptcy Reform Act of
12 1978 stated that: ‘[I]t will often be more appropriate to permit proceedings to
13 continue in their place of origin, when no great prejudice to the bankruptcy estate
14 would result, in order to leave the parties to their chosen forum and to relieve the
15 bankruptcy court from many duties that may be handled elsewhere.’” *In re Robbins*,
16 964 F.2d at 345 (quoting S.Rep. No. 989, 95th Cong., 2d Sess. 50 (1978), reprinted in
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21 ⁸ The **Real Property Owners** note that the Ninth Circuit has recently offered
22 commentary related to the issue of the treatment of claims for just compensation in
23 bankruptcy in the case of *In re City of Stockton, California*, 909 F.3d 1256 (9th Cir.
24 2018) (“*Cobb*”). However, *Cobb* is so anomalous and distinguishable in terms of
25 critical facts that it offers little useful direction. Unlike *Cobb*, which was decided on
26 equitable mootness grounds, the **Real Property Owners** undoubtedly enjoy
27 “actual property rights” in the **Subject Properties** and “in rem right[s] under
28 nonbankruptcy law” pursuant to the Eminent Domain Law by virtue of their status
that justifies priority of their recovery over that of general unsecured creditor of the
Debtor. See *id.* at 1266. They do not hold “just a contractual or statutory right for
monetary relief” that “can be adjusted in bankruptcy.” *Id.* The **Real Property**
Owners have not classified their claims as unsecured monetary claims – nor has
the **Debtor** yet purported to characterize any of the claims. Nothing would preclude
their interests being adjudicated in the superior courts in which the **Debtor** filed
the **Eminent Domain Actions**. They have waived nothing. And they bring this
motion at the earliest practicable time.

1 1978 U.S.C.C.A.N. 5787, 5836 and citing 2 Collier on Bankruptcy § 362.07[3], at
2 362-71 (15th ed. 1991) (“the liquidation of a claim may be more conveniently and
3 speedily determined in another forum”)); accord *In re Universal Life Church, Inc.*,
4 127 B.R. 453, 455 (E.D. Cal. 1991), aff’d sub nom. *Universal Life Church, Inc. v.*
5 *United States*, 965 F.2d 777 (9th Cir. 1992) (quoting H.R. No. 595, 95th Cong., 1st
6 sess. 343, 1977 U.S.Code Cong. & Admin. News 5787, 6300) (“The legislative history
7 of § 362(d)(1) states that ‘a desire to permit an action to proceed to completion in
8 another tribunal may provide [] cause’ for relief from a stay.”) And, it bears note
9 that in the more often-encountered cases in which the debtor in bankruptcy is a
10 property owner whose property is subject to condemnation proceedings, other courts
11 have deemed granting relief from the automatic stay for cause appropriate in the
12 absence of great prejudice to the estate. See, e.g. *In re Lehigh Valley Properties, Inc.*
13 482 B.R. 127, 132 (Bankr. E.D. Pa. 2012) (citing *In re The SCO Group, Inc.*, 395
14 B.R. 852, 856–57 (Bankr.D.Del.2007); *In re Bruce*, Case No. 00–14521DWS, 2000
15 WL 968777, at *3 (Bankr.E.D.Pa. July 10, 2000); and *In re Kaufman*, 98 B.R. 214,
16 215 (Bankr.E.D.Pa.1989)).

20 These facts dictate that granting relief from the automatic stay to the fullest
21 extent possible, so that just compensation may be determined in the normal course
22 in the state courts in which they were filed, and under the Eminent Domain Law
23 that is tailored to ensure their most effective administration, is the appropriate
24 course. Such relief will result in no interference with the bankruptcy and will work
25 no injury to the **Debtor** or creditors. The **Debtor** will simply continue conducting
26 business in the normal course, continue to pursue the acquisition of property rights
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1 it needs for vital infrastructure to serve its operations, and continue to prosecute
2 suits filed well before the bankruptcy. The **Eminent Domain Actions** would
3 proceed just as they did prior to the bankruptcy. The **Debtor** has itself asserted by
4 separate motion in the case that it routinely pursues, and often settles, eminent
5 domain actions, and that such proceedings are integral to its ability to deliver
6 utility services. The **Debtor** further agrees that it would represent no more than a
7 continuation of past business practices for it to maintain the **Eminent Domain**
8 **Actions**, and to obtain and pay just compensation, whether upon the entry of
9 judgment based on jury award or stipulation, or pursuant to settlement agreements;
10 and that pending proceedings should be treated the same as newly filed actions.
11

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13 There would be no injury to the **Debtor** or other creditors. To the contrary,
14 the requested relief would fairly and efficiently accommodate the **Debtor** and the
15 estate's ability to secure necessary property rights in furtherance of the safe and
16 effective operation of its business. Further, the mandate of just compensation
17 requires the **Real Property Owners** be paid no less, but also no more than the
18 value of what is taken from them, ensuring that the estate is not diminished to the
19 detriment of the **Debtor** or any other creditors. The **Debtor** and the estate will
20 incur no greater expense to pay the just compensation determined in the **Eminent**
21 **Domain Actions** than the value of the interests it acquires, which the **Debtor**
22 needs. And it will retain the option of abandonment in the unlikely even that its
23 needs change.
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26 Allowing the **Eminent Domain Actions** to proceed were they are pending in
27 state court will further permit the most expeditious and economical resolution of the
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1 actions, which are all well advanced in their posture, and for all concerned. No gain
2 is had by disrupting such proceedings, or hindering or delaying the proceedings or
3 payment of just compensation as judgments are entered by requiring intervention of
4 the bankruptcy court to approve routine actions and constitutionally mandated
5 payments. The state courts that regularly handle special proceedings under
6 provisions of the Eminent Domain Law are in the best position to shepherd the
7 **Eminent Domain Actions** to their conclusion accommodate jury trials as
8 necessary and enforce the laws unique to California's substantive and procedural
9 rules. The trial judges who have overseen the progress of the **Eminent Domain**
10 **Actions** prior to the Debtor's bankruptcy filing are knowledgeable not only of the
11 relevant legal rules and principles, but also of the facts of the cases.

14 What is plain is the grave injury the **Real Property Owners** would suffer if
15 relief is not granted, which clearly outweighs the non-existent harm of doing so. To
16 the extent the Court may receive complaint that the requested relief confers priority
17 upon the **Real Property Owners'** claims, that priority is justified in light of the
18 constitutional provision for just compensation, which would be unduly impinged
19 upon if the requested relief is not granted. Avoiding the violation of the **Real**
20 **Property Owners'** constitutional rights undoubtedly outweighs whatever harm
21 may result to other creditors of the **Debtor**.

24 The **Debtor** is not compelled to follow through with any of the acquisitions it
25 has initiated. Even post-judgment, the **Debtor** retains, pursuant to the Eminent
26 Domain Law, the right to abandon, however unlikely that course may be. CCP §
27 1268.510(a). However, if the **Debtor** is to proceed in securing title to valuable
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1 interests in the **Subject Properties**, it is hard to conceive of a persuasive
2 argument against the **Real Property Owners** receiving payment of just
3 compensation, which is based on a fair market value standard, from an equitable
4 standpoint. Were the **Debtor** to file the same actions today, it would be obligated to
5 do so. Were the **Debtor** to seek out and enter into a transaction to purchase real
6 property tomorrow in order to further reasonable business objectives, whether in
7 the ordinary course or pursuant to the Court's prior approval, there would be no
8 question that the **Debtor** should pay the fair market value for such property. It
9 would be manifestly unjust for the **Real Property Owners** to be denied their
10 compensation, which is expressly guaranteed in both the federal and state
11 constitutions.

14 Similarly, were the **Real Property Owners** and the **Debtor** parties to an
15 executory contract, or were the **Debtor** in possession of the **Subject Properties**
16 pursuant to a lease, it would be incumbent upon the **Debtor** to affirm or reject in
17 either circumstance, making a determination to accept ongoing benefits of the
18 particular arrangement or to forgo them and be relieved of its contractual
19 obligations.

21 It would be patently unjust if the **Real Property Owners**, whose rights are
22 constitutionally derived, not merely contractual, were to be afforded less protection
23 than a landlord or freely contracting party who has assumed a degree of risk in
24 dealing with the **Debtor**. The **Real Property Owners** did not contract with the
25 **Debtor**. They had no control whatsoever over the **Debtor's** pursuit of interests in
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1 the **Subject Properties**. They did not file the **Eminent Domain Actions** or
2 willingly grant the **Debtor** interim possessory rights.

3 The **Debtor** is currently benefitting from the pre-judgment possession it
4 enjoys, contingent upon deposits of probable just compensation and requirement
5 that it pay the ultimate amount of just compensation finally determined in full. In
6 each of the **Eminent Domain Actions**, it has proceeded to construct its project
7 improvements and avoid delay that might have proved costly or detrimental to the
8 **Debtor's** delivery of services to its customers. The estate has reaped, and continues
9 to reap, the benefit. But this benefit has a price, and is subject to a process.
10 Granting the requested relief will allow the **Debtor** to secure needed final orders of
11 condemnation and ensure the **Real Property Owners** are paid the just
12 compensation to which they are constitutionally entitled, in a timely manner, and in
13 the most appropriate forum it is the only appropriate option to serve the best
14 interests of all concerned.

15 **V. CONCLUSION**

16 For all of the reasons cited herein, the **Real Property Owners** respectfully
17 request the Court grant the relief requested.

18 Date: April 2, 2019

19 **DESMOND, NOLAN, LIVAICH & CUNNINGHAM**

20 By: /s/ KRISTEN RENFRO

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